

DATE OF DECISION: 5.10.1995.

HIGH COURT OF GUJARAT AT AHMEDABAD.

CRIMINAL APPEAL NO. 363 OF 1989.

FOR APPROVAL AND SIGNATURE

THE HONOURABLE Mr.JUSTICE K. J. VAIDYA,
AND
THE HONOURABLE Mr.JUSTICE M. H. KADRI.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether tT....R

[illegible]

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr.Vivek Barot, Advocate for the Appellant.

Mr.S.T.Mehta, APP, for the Respondent-State.

CORAM: K.J.VAIDYA & M.H.KADRI, JJ.
(Dt. 5/10/1995)

ORAL JUDGMENT (per VAIDYA, J.)

Bharat Girjashanker Raval, original accused no.1,

by this appeal has brought under challenge the impugned judgment and order dated 27.4.1989, rendered in Sessions Case No. 266 of 1987, passed by the learned Additional Sessions Judge, Court No.2, Ahmedabad, wherein, on his coming to be tried for the alleged offences under Ss.21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") was, at the end of the trial convicted for the same and sentenced to suffer RI for 10 years and to pay a fine of Rs.1.0 lac and in default to undergo further RI for one year.

2. To state few relevant facts of the prosecution case, as far as they are necessary to decide due compliance of Sec.50 of the Act. According to the prosecution, P.W.3 - Abrarhussen Saukathussen, Inspector, Central Excise and Customs, received an information that on 23.9.187 that one Bharat Raval was to go with 2 Kgs. of brown sugar to deliver it to one Bansilal Darji, residing in Flat No. 2/4, Umasut Society, Vasna, Ahmedabad. Therefore, Abrarhussen Saukathussen called Mr.N.R.Malek, another inspector of his department and reduced into writing the information received. Thereafter, accordingly P.W.3 Abrarhussen alongwith others, viz. P.W.1- B.M.Bhatt, Superintendent, Central Excise and Customs, P.W.2 R.M.Kusumagar, Inspector, Customs and P.W.4 - Dhirubhai Ravjibhai Siroya, Inspector, Customs, went to Umasut Society and lied in wait alongwith two panchas for the arrival of the suspect. While so waiting after some time, they saw two persons coming on a scooter and nearing Flat No.2/4. After stopping the scooter, from the dickey they took out a cloth bag and went inside. The person who drove the scooter on being questioned was identified as Bharat Girjashanker Raval and the other person sitting on the pillion was identified as Bansi Rupaji Chauhan. On these two persons entering the flat, the Customs Officers lying in wait, entered the flat. Then they saw Bharat Girjashanker Raval, Bansi Rupaji Chauhan and a third person who was identified as Champaklall, sitting chit-chatting in a room. When the Customs Officers entered the room of the flat in question, Bharat Girjashanker Raval was holding a cloth bag which contained a box. On taking search of the bag in question, brown sugar weighing 985 gms. valued at Rs.59,000/- was found, for the possession of which the accused could not give any explanation. On the basis of these facts, ultimately a complaint came to be filed before the learned Chief Metropolitan Magistrate, Ahmedabad, who thereafter committed the case to the Court of Sessions for the alleged offences punishable under Ss.21 and 29 of the Act.

3. At the trial, the accused pleaded not guilty and claimed to be tried.

4. The trial court accepting the prosecution evidence, convicted and sentenced the appellant-accused for the alleged offences as stated in detail in above para 1 of this judgment, giving rise to the present appeal.

5. Mr.Vivek Barot, the learned Advocate appearing for the appellant while challenging the impugned order of conviction and sentence submitted that since the searching officers have not complied with the mandatory provision as contained in Sec.50 of the Act, the whole conviction stands vitiated. Making good this submission Mr.Barot has relied upon the decision of the Supreme Court rendered in the case of ALI MUSTAFFA ABDUL RAHMAN MOOSA vs. STATE OF KERALA, reported in AIR 1995 s.c. P.244 = 1995 SCC (Cri.) p.32. Mr.Barot on the basis of the aforesaid judgment of the Supreme court finally urged that since there is not a whisper of evidence as regards compliance of Sec.50 of the Act, which is mandatory, the appellant accused deserves to be acquitted forthwith.

6. When Mr.S.T.Mehta, Ld.APP was point blank confronted with the neat point of law raised as supported by the Supreme Court decision and accordingly was asked to point out from the record as to whether the mandatory requirement of S.50 has been duly complied with or not by the searching officers, the learned APP, after going through the evidence, was frank enough to say that there is nothing, on the basis of which he can advance his case any further. Of course, Mr.Mehta did make some feeble attempts to point out that it was from the house of Bansi Rupaji - original accused no.2 that from the bag in possession of original accused no.1, the muddamal brownsugar was found, and therefore, it cannot be said that the whole prosecution story is cooked up. This distinction of Mr.Mehta is of no consequence, in view of the decision of the Supreme Court in the case of ALI MUSTAFFA ABDUL RAHMAN MOOSA (supra) which squarely covers the point raised in the present case. In this view of the matter, there is nothing on the record on the basis of which the impugned order of conviction and sentence can be sustained even for a minute more. We are of course, conscious of the fact that as dangerous a drug as brown sugar is recovered involved in this case and the persons involved with the nefarious activity of dealing in the same are acquitted, and that too, acquitted on the short ground of non-compliance of the mandatory provision of S.50 of the Act.This non-compliance is indeed very serious because of which only we feel that the accused are getting acquitted. Accordingly, it is high time that the Department instructs its officers to be extremely careful

in complying with the provisions of the Act, with a view to see and ensure that the prosecution does not fail on the ground of non-compliance of the same.

7. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence, so far as Bharat Girjashankar Raval - original accused no.1 in Sessions Case No.266 of 1987 - is quashed and set aside. The accused is ordered to be set at liberty forthwith unless his presence is so required in jail in connection with any other pending case. Fine, if paid be refunded to the appellant-accused.
